IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2919 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAGHUNATHSINGH CHAMANSINGH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BP MUNSHI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 2.
Ms. Maithily Mehta, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 15/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner, who was serving as Unarmed Head Constable, Grade-I in the Police Department has prayed for an

appropriate writ, order or direction quashing and setting aside the order dated 6.9.1995 issued by the respondent No.3 compulsorily retiring him from the services.

2. Shri B.P. Munshi, learned advocate appearing for the petitioner, has submitted that the impugned order of compulsory retirement is arbitrary, illegal and passed with a malafide intention. It is further submitted that two departmental enquiries were initiated against the petitioner, and in one case by order dated 30th September 1995 punishment was imposed of deducting one month's salary, however against the same after the order of compulsory retirement the petitioner preferred appeal before the appellate authority and the appellate authority has by order dated 3.8.2000 allowed the said appeal and quashed and set aside the said order. It is further submitted that so far as second departmental enquiry is concerned by order dated

29.9.1995 punishment was imposed withholding of one increment for one year against which the petitioner preferred appeal before the appellate authority after the order of compulsory retirement and the appellate authority dismissed the said appeal by order dated 13th September 1999, and in fact the petitioner had already deposited the amount of Rs. 900 which is equivalent to one increment for one year, as the petitioner was once inflicted punishment the petitioner cannot be punished again for the same misconduct, and therefore the impugned order of compulsory retirement is required to be quashed and set aside. Considering the affidavit-in-reply and the documents annexed with the affidavit-in-reply, it is submitted that as some of the documents are not legible and/or readable it is not possible for the petitioner to comment upon the same. It is further submitted by Shri Munshi that as the particulars given in the affidavit-in-reply are too vague on the basis of

which the order of compulsory retirement cannot be sustained. It is further submitted by the petitioner that the petitioner was already promoted and therefore Rule 161 of the B.C.S.R., will not be applicable. It is submitted that the impugned order is a camouflage order and in view of the departmental enquiry against the petitioner as referred to hereinabove he was compulsorily retired. It is submitted that once the employee is facing departmental enquiry he cannot be compulsorily retired. He has relied upon judgment of the learned Single Judge of this Court in the case of ***C.N. Pancholi Vs. Government of Gujarat,*** reported in ***1996 (2) GLR Page 638*** and therefore requested to allow the present Special Civil Application.

3. Ms. Maithily Mehta, learned AGP has opposed the present Special Civil Application. While relying upon the affidavit-in-reply, it is submitted that the impugned order is not by way

of punishment but it is a simpliciter order of compulsory retirement and it has nothing to do with the departmental enquiry. It is submitted that the impugned order of compulsory retirement is passed in public interest considering the past services of the petitioner. It is submitted that the petitioner has been retired prematurely invoking Rule 161 of the BCSR and all the necessary procedure has been followed. It is submitted that considering the performance of last 10 years, since his performance in work was not satisfactory as he was irregular in service and/or habitually remained absent from duty on number of occasions for which he was punished and even his periods of absence were treated as leave without pay on many occasions, and considering his irresponsible attitude towards the duties and such attitude cannot be tolerated in a disciplined force he has been compulsorily retired. It is further submitted that during the whole tenure of service on 28 occasions the

petitioner remained absent for 673 days and the said absence was treated as leave without pay. It is further submitted that there are about 43 minor punishments and one major punishment in the account of the petitioner. Ms. Mehta, has relied upon the judgment of the Hon'ble Supreme Court in the case of ***M.L. Binjolkar Vs. State of M.P., reported in (2005) 6 S.C.C. 224 [Para 5]*** and as held by the Hon'ble Supreme Court she has submitted that the order of compulsory retirement is not a punishment, and that the purpose and object of premature retirement of a Government employee is to weed out the inefficient, the corrupt, the dishonest or the dead-wood from Government service. It is, therefore, requested to dismiss the present Special Civil Application.

4. At the outset, it is required to be noted that, in the petition there are no allegations of malafide. On consideration of the impugned order passed by the respondents compulsorily retiring

the petitioner it appears that the said order is an order simpliciter which was passed invoking Rule 161 of the B.C.S.R., in public interest. As held by the Hon'ble Supreme Court in the case of *M.L. Binjolkar V. State of M.P. [supra]*, order of compulsory retirement is not a punishment. Considering the affidavit-in-reply and the annexures, it appears that in entire service career on 28 occasions the petitioner remained absent for 673 days and the said absence has been treated as leave without pay. There are about 43 minor punishments and one major punishment in the account of the petitioner. It appears from the affidavit-in-reply that, while passing the impugned order the respondents had considered the performance of the petitioner during previous 10 years and it has been found that the performance of the petitioner is not satisfactory as he was irregular in duties and habitually remained absent in duties without permission of higher authorities. Being an employee in disciplined

force, such irresponsible attitude towards the duties cannot be tolerated. Considering the above, if the petitioner is compulsorily retired, it cannot be said that the same is in any way illegal and/or contrary to the provisions of Statutes and/or Rule 161 of the BCSR. As observed above, in the petition there are no allegations of malafide alleged.

5. As held by the Hon'ble Supreme Court, an order of compulsory retirement is not a punishment. The employer takes into account various factors emanating from the employee's past records and takes a view whether it would be in the interest of the employer to continue services of the employee concerned. The employer can certainly pass an order of compulsory retirement when the employee is considered to be a dead-wood and practically of no utility to the employer. It is further observed by the Hon'ble Supreme Court that the purpose and object of

premature retirement of a Government employee is to weed out the inefficient, the corrupt, the dishonest or the dead-wood from Government service. Considering the law laid down by the Hon'ble Supreme Court and the observations as quoted above and considering the past record of the petitioner which is narrated in the affidavit-in-reply, it cannot be said that the impugned order suffers from any illegality.

6. So far as the contention on behalf of the petitioner that some of the documents annexed with the affidavit-in-reply are not legible, it is required to be noted that in fact the same are part of Service Book which are with the petitioner and therefore the objection is not tenable.

7. So far as the contention on behalf of the petitioner that for one of the misconducts the petitioner was punished by imposing punishment of

withholding of one increment for one year and the petitioner has paid the said amount and that the petitioner cannot be punished twice; and another contention that once the employee is facing departmental enquiry he cannot be compulsorily retired are concerned, it is required to be noted that the impugned order has been passed by invoking Rule 161 of the BCSR, and considering the past performance in 10 years, and after completion of 56 years the impugned order has been passed, the said submission cannot be accepted as the impugned order is not passed by way of punishment and the departmental enquiry had nothing to do with the impugned order and/or the impugned order was not based upon any departmental enquiry and/or any other misconduct.

8. Considering the above and in particular the past performance and conduct of the petitioner, it cannot be said that the impugned order passed by the respondent is in any way

illegal and/or arbitrary more particularly when there are no allegations of malafide.

9. For the reasons stated above, the petition fails and the same is required to be dismissed and is accordingly dismissed. Rule is discharged, however, there will be no order as to costs.

Rmr. [M.R. Shah, J.]